IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.C. No. 33 of 1999

DATE OF DECISION: 19.7.2007

M/s Liberty Group Marketing Division, Karnal

…Petitioner

Versus

The Commissioner of Income-tax (Central), Ludhiana.

…Respondent

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

**HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present: Mr. Sanjay Bansal, Senior Advocate, with
Mr. Parvesh Saini, Advocate,
for the petitioner-assessee.

Mr. Sanjiv Bansal, Advocate,
for the respondent-revenue.

**M.M. KUMAR, J.**

This order shall dispose of I.T.C. Nos. 33 and 34 of 1999. The prayer made by the assessee in both the petitions filed under Section 256(2) of the Income-tax Act, 1961 (for brevity, 'the Act'), is for issuance of direction to the Income Tax Appellate Tribunal, Delhi Bench, New Delhi (for brevity, 'the Tribunal') to frame the statement of the case and refer question of law which is claimed to have emerged from the orders dated 18.2.1998, passed in I.T.A. No. 7147/D/90, in respect of Assessment Year 1986-87 and I.T.A. No. 7148/D/90, in respect of Assessment Year 1987-88. The following question of law has been claimed:-

> "Whether in the facts and circumstances of the assessee's case, the Tribunal has erred in law while not accepting claim under Section 80-I although assessee fulfilled all requisite conditions of being an industrial undertaking?

The assessee is a registered partnership firm and made an application to the Tribunal under Section 256(1) of the Act claiming the aforementioned question of law for reference to this Court with the pleadings that the aforementioned question emerges out the orders referred above. A perusal of the record shows that the Assistant Commissioner of Income-tax framed the assessment but did not allow the claim of the assessee under Section 80-I of the Act on the ground that the assessee cannot be regarded as an industrial undertaking, which may be covered by the necessary conditions envisaged by Section 80-I of the Act. It is appropriate to mention that the assessee is engaged in the business of manufacture and sale of shoes and in para 6 of the order of the Tribunal there are findings with regard to the role of the assessee in the manufacturing of shoes. The Tribunal has also observed that the shoes were got manufactured wholly from the cobblers on piece rate basis who were not employees of the assessee.

Mr. Sanjay Bansal, learned senior counsel has argued that the Tribunal has placed reliance on two judgments of the Madras High Court in the cases of **Commissioner of Wealth-tax v. S. Venkatachalam Pillai, (1995) 215 ITR 406 (Mad.) and Commissioner of Wealth-tax v. V.O. Ramalingam, (1995) 216 ITR 566 (Mad.)**. The aforementioned judgments represent the view that an assessee who gets manufacture its goods from an outside agency would not be regarded as an industrial undertaking within the meaning of Section 80-I of the Act and, therefore, would not qualify to claim deduction. According to the learned counsel, a contrary view has been expressed by other High Courts, which is in favour of the assessee, namely, **Commissioner of Income-tax v. Penwalt India Ltd., (1992) 196 ITR 813 (Bom.)**; **Commissioner of Income-tax v. Talwar Khuller (P.) Ltd., (1999) 235 ITR 70 (All.)**; **Commissioner of Income-tax v. Prabhudas Kishordas Tobacco Products P. Ltd., (2006) 282 ITR 568 (Guj)**; **Commissioner of Income-tax v. Taj Fire Works Industries, (2007) 288 ITR 92 (Mad.)**; and **Commissioner of Income-tax**

**v. Prithviraj Bhoorchand, (2006) 280 ITR 94 (Guj.)**. He has further submitted that there is no judgment of either Hon'ble the Supreme Court or this Court which is jurisdictional High Court on the aforementioned question of law.

Mr. Sanjiv Bansal, learned counsel appearing for the revenue could not controvert that there is conflict of opinion between various High Courts, as has been submitted by the learned counsel for the assessee. He has also not been able to dispute that on the subject there is no view expressed by Hon'ble the Supreme Court or this Court which is jurisdictional High Court. However, he has pointed out that the view contrary to Madras High Court, taken by other High Courts, has been expressed after the Tribunal has declined the application of the assessee filed under Section 256(1) of the Act.

We have thoughtfully considered the submissions made by the learned counsel for the parties and are of the view that the question sought by the assessee deserves to be determined by this Court, especially when there is no view expressed either by Hon'ble the Supreme Court or by this Court which is jurisdictional High Court.

In view of above, these petitions are allowed. The Tribunal is directed to draw statement of the case and refer the above noted question of law along with the statement of the case to this Court.

**(M.M. KUMAR)**
**JUDGE**

**(AJAY KUMAR MITTAL)**
**JUDGE**

**July 19, 2007**

Pkapoor